

**UNITED STATES DISTRICT COURT
DISTRICT OF MASSACHUSETTS**

UNITED STATES OF AMERICA,

v.

GREGORY COLBURN et al.,

Defendants.

Case No. 1:19-cr-10080-NMG

**DEFENDANT JOHN WILSON'S REQUEST FOR JURY INSTRUCTION
CONCERNING THE GOVERNMENT'S TAX THEORY**

Pursuant to Fed. R. Crim. P. 30, and in response to the Government's Opposition to Defendant John Wilson's Motion to Strike Testimony of IRS Agent, ECF No. 2328 (the "Opposition"), filed on September 30, 2021, Defendant John Wilson respectfully requests that the Court give the jury instruction attached as Exhibit A.

In the Opposition, the government asserts that Mr. Wilson "is *not* charged with filing a false tax return for not offsetting the value of any positive admission's consideration from the \$100,000 payment he claimed as a charitable donation on his 2014 tax returns." Opposition at 1 (internal quotation marks omitted); *accord id.* at 2. Rather, the government asserts that it has "charged Wilson with purchasing admission to USC by bribing Jovan Vavic, the coach of the USC Men's Water Polo team, to purport to recruit Wilson's son to the team." *Id.* at 2.

First, in taking this position, the government has expressly waived the following theory: that Mr. Wilson willfully filed a false tax return because he failed to offset the value of goods or services that he received from USC. Accordingly, as set forth in Exhibit A, the Court should instruct the jury that (1) the government does not allege that Mr. Wilson failed to offset the alleged value of any goods or services that he allegedly received from USC; and (2) the jury cannot convict

Mr. Wilson of willfully filing a false tax return on the basis that he failed to offset the value of any goods or services that he might have received from USC.

Second, the government's theory that Mr. Wilson willfully filed a false tax return because he "bribed" Mr. Vavic is inherently flawed. As explained in Defendants' Motion for Judgment of Acquittal Under Federal Rule of Criminal Procedure 29 (ECF No. 2330), which is hereby incorporated by reference, the government does not assert that Mr. Wilson ever intended to make payments that went personally to Mr. Vavic. *See* ECF No. 2330 at 12-13, 33. Rather, the evidence shows, and the government concedes, that Mr. Wilson intended to make contributions that would benefit the USC Men's Water Polo Program. *See id.* As set forth in Defendants' Supplemental Objection to Government's Jury Instructions Regarding the Meaning of "Bribe" (ECF No. 2077), which is hereby incorporated by reference, a payment to an alleged victim—here, USC—cannot constitute a bribe or kickback, even where a coach may receive some psychic or indirect benefit from the payment. Thus, there is no bribe here. Accordingly, as set forth in Exhibit A, the Court should instruct the jury that it cannot convict Mr. Wilson of willfully filing a false tax return based on this theory.

Third, if the Court allows this theory to go to the jury (it should not), the Court should expressly instruct the jury as follows: if the jury finds that Mr. Wilson did not bribe Mr. Vavic, then it cannot convict Mr. Wilson of willfully filing a false tax return.

For the foregoing reasons, the Court should give the jury instruction set forth in Exhibit A. Defendants reserve the right to submit additional supplemental requested jury instructions. Further, Defendants reserve the right to supplement, modify, or withdraw the attached instruction as appropriate.

Respectfully submitted,

/s/ Michael Kendall

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DATED: October 3, 2021

CERTIFICATE OF SERVICE

I, Michael Kendall, hereby certify that on October 3, 2021 this document, filed through the CM/ECF system, will be sent electronically to all registered participants in this matter as identified on the Notice of Electronic Filing (NEF).

/s/ Michael Kendall